UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES of AMERICA	:	
	:	
v.	:	Criminal No. 3:02CR69 (CFD)
	:	
ARTHUR PUGH,	:	
Defendant.	:	

RULING ON CERTAIN MOTIONS IN LIMINE

The defendant, Arthur Pugh, is charged by an indictment with one count of possession with intent to distribute 50 grams or more of a mixture or substance containing a detectible amount of cocaine base ("crack cocaine") in violation of 21 U.S.C. § 841(a)(1) and 841(b)(1)(A)(iii), one count of possession of a firearm by a felon in violation of 18 U.S.C. § 922(g)(1), and one count of possession of a firearm during and relating to a drug trafficking crime in violation of 18 U.S.C. § 924 (c)(1)(A)(i). On August 19, 2003, the Court granted the defendant's motion to sever count two and try that count in a separate trial. Pending are the defendant's Motion in Limine Re: Prior Acts [Doc. # 62], and the defendant's motion in Limine Re: Search Warrant [Doc. # 61], both dated July 14, 2003. For the following reasons, both motion are DENIED.

I. Prior Acts

The defendant objects to the government submitting evidence to the jury of the defendant's alleged illegal drug transactions that took place outside the La Mirage Café on Albany Avenue in Hartford on the night of his arrest and the consequent stop of his vehicle which preceded the execution of the search warrant at 107 Mather Street in Hartford. The defendant argues that the charges in the indictment are based on the defendant's alleged constructive possession of cocaine base and a Glock 9mm pistol that were found in and near

what the government alleges is the defendant's bedroom at 107 Mather Street. Because the defendant has not been charged on the basis of any alleged narcotics sales in front of the La Mirage Café, the defendant submits that any testimony regarding such transactions "is not relevant to the charges in the indictment" and therefore inadmissible. In addition to his claim that evidence of drug sales in front of the La Mirage Café prior to his arrest and the search of 107 Mather Street is not relevant, the defendant is also arguing that such evidence should be excluded on the basis of Federal Rule of Evidence 404(b), which provides, in relevant part, that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith . . ."[1]

With regard to the defendant's claim that evidence of prior drug transactions at the La Mirage on the night of the search is not relevant, the Court finds that the government's proposed evidence is relevant to the element of intent in the 21 U.S.C. § 841(a) charge because, if credited by the jury, it would tend to make it more likely that the defendant intended to distribute the cocaine base that the jury concludes he possessed (if any). See United States v. Wong, 40 F.3d 1347, 1378 (2d Cir. 1994) ("Evidence is 'relevant' if it has 'any tendency' to prove or disprove a fact of consequence in the trial.") (citing Fed.R.Evid. 401).

To the extent that the defendant is arguing that such evidence is prohibited by Federal Rules of Evidence 404(b), his motion is also denied. The Court finds that the challenged evidence is not "other acts evidence" within the meaning of Rule 404(b).[2] "It is well established

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[1]In the alternative, the defendant asserts that any probative value that such evidence has is substantially outweighed by the danger of unfair prejudice. See Fed.R.Evid. 403.

[2]Rule 404(b), prohibits the introduction of evidence of other crimes or acts "to prove the character of a person in order to show action in conformity therewith." Fed.R.Evid. 404(b). The rule also explicitly provides that such evidence "may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of

that evidence of uncharged criminal activity is not considered 'other crimes' evidence under Fed.R.Evid.404(b) if it arose out of the same transaction or series of transactions as the charged offense, if it is inextricably intertwined with the evidence regarding the charged offense, or if it is necessary to complete the story of the crime on trial." United States v. Gonzalez, 110 F.3d 936, 942 (2d Cir. 1997). (citations omitted). See also United States v. Carboni, 204 F.3d 39, 44 (2d Cir. 2000) (same). Here, the challenged evidence is intertwined with the charged offense and it is necessary to complete the story of the crime at trial. According to the government's theory of the case, at the time the law enforcement officials stopped the defendant's vehicle, the defendant was returning to 107 Mather Street to replenish his supply of cocaine base. Although the defendant disputes this, there will be sufficient circumstantial evidence from which the jury could credit the government's theory. First, there is the expected testimony of law enforcement officials that the defendant was engaged in the sale of illegal drugs in front of the La Mirage Café. Next, the defendant's car was stopped soon after the drug transactions were completed while it was traveling in the direction of 107 Mather Street. Finally, when the car was stopped by law enforcement officials, the officers did not find any drugs, but they found a substantial amount of cash as well as a key to the padlock on the room in which the cocaine base was later found. Taken together, this evidence–the defendant's alleged sales of drugs, the route of his car at the time it was stopped, the fact that he did not possess any drugs when he was stopped but possessed a large amount of cash, and his possession of a key to the room which contained drugs at 107 Mather Street–supports the government's theory that the defendant was returning to 107

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mistake or accident." Id. Here, the government has not argued that the disputed evidence falls within this exception to Rule 404(b). Rather, it has argued that the evidence in question is not properly characterized as "other acts" evidence. Because the Court agrees with the government that Rule 404(b) is not applicable here, it need not address whether this exception applies.

Mather Street to replenish his supply of drugs, and therefore addresses the intent element of count one. Moreover, evidence of the alleged activity in front of the La Mirage Café and the car stop is necessary to complete the "story of the crime," since that alleged activity puts the conduct of the law enforcement officials in context by providing an explanation for the stop and search of the defendant's vehicle which yielded the key and cash.

The Court also finds that the probative value of the government's proposed evidence is not substantially outweighed by the danger of unfair prejudice. See United States v. Birbal, 62 F.3d 456, 464 (2d Cir. 1995) ("Rule 403, by its terms, makes no exception for 'intertwined' or 'background' evidence, but applies to all evidence."). In Birbal, the Second Circuit upheld the district court's decision to admit evidence regarding the circumstances of the death of one of the defendants' heroin customers. The Court acknowledged that such evidence might be prejudicial to the defendants, but reasoned that the danger of unfair prejudice did not substantially outweigh the probative value of the evidence:

> Here, testimony concerning the circumstances of [the customer's] death, even if prejudicial to defendants, was properly admitted to show that [defendants] had distributed heroin to [the customer] shortly before his death. . . . Certainly, this evidence--which was corroborated by the medical examiner's testimony–was crucial to the government in demonstrating that [defendants] sold heroin to [the customer]. Thus, the court did not abuse its discretion in denying [one defendant's] in limine motion to exclude all testimony regarding [the customer's] death.

Birbal, 62 F.3d at 464. Here, the potential prejudice to the defendant is less than the potential prejudice to the defendants in Birbal. Also, as in Birbal, the evidence here is highly relevant to a necessary element of the charge–i.e., intent.

This ruling is without prejudice to the defendant requesting a limiting instruction regarding the jury's consideration of the evidence of alleged drug transactions in front of the La Mirage Café and the stop of the car.

II. Search Warrant

The defendant seeks an order that would preclude any of the government witnesses from mentioning that the search of 107 Mather Street was conducted pursuant to a state search warrant. The defendant has agreed to stipulate that the search was proper and legally conducted, and therefore claims that there is no need for any reference to the search warrant. He claims that the defendant would be unduly prejudiced by any reference to the warrant because it would make the jury aware that a judicial officer had made a determination that there was probable cause that there were drugs in the house. He also claims that any probative value the search warrant has is substantially outweighed by the danger of unfair prejudice under Fed.R.Evid. 403.

There appears to be little authority concerning this issue. However, in Clark v. State of Indiana, 379 N.E.2d 987 (Ind. Ct. App. 1978), the defendant appealed the trial court's decision to admit into evidence the search warrant and its supporting probable cause affidavit, claiming that "the documents contained matter which prejudiced his case." Id. at 988. The Indiana Court of Appeals agreed with the defendant, noting that "[t]here is no reason for the trier of fact to view the probable cause affidavit or search warrant, particularly since these documents often contain statements highly prejudicial to the defendant." Id. However, the Court affirmed the defendant's conviction:

> Although we conclude that the proper procedure in the case at bar would have been to withhold the probable cause affidavit and search warrant from the jury, we nevertheless cannot say that the trial court committed reversible error. In admitting the documents, the trial court carefully admonished the jurors to disregard any prejudicial matter, and to consider the exhibits only for the purpose of showing that the search was conducted under lawful authority.

Id. at 989. Here, in contrast, the government does not intend to offer the search warrant or its supporting affidavit into evidence. Rather, the government expects that its witnesses only will

testify that the search of 107 Mather Street was conducted pursuant to a search warrant. Thus, unlike Clark, there is no danger that the jury will be exposed to prejudicial information about the defendant that might appear in those documents.

Moreover, like the evidence of alleged sales in front of the La Mirage Café discussed above, the fact that the search of 107 Mather Street was conducted pursuant to a search warrant is necessary to "complete the story of the crime on trial." Gonzalez, 110 F.3d at 942. The fact that the officers had a search warrant when they conducted the search helps put the officers' conduct in their proper context and may assist the jury in following the events of that evening.[3]

Finally, the defendant's motion is also denied to the extent that he has argued that the probative value of mentioning the search warrant is substantially outweighed by the danger of unfair prejudice under Rule 403. The defendant claims to be concerned that jurors would be aware that a Superior Court Judge had made a finding of probable cause that there were drugs in the home; however, there is no apparent dispute here that substances appearing to be cocaine base were found at 107 Mather Street during the search; the defendant apparently contests that they were in *his* possession and it appears that he might contest whether the substances are actually cocaine base. In any event, the Court concludes that the danger of unfair prejudice does not substantially outweigh the probative value of this evidence. In addition, the defendant is free to propose a limiting instruction that would tell the jury not to consider the issuance of the search warrant as evidence of the guilt of the defendant for the charges in this case.

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[3]The defendant's argument is based on the assumption that jurors will be aware that a search warrant may only issue upon a finding of probable cause by a judge. Assuming that is the case, it seems at least equally likely that the jurors will be aware that in ordinary circumstances the search of a private residence is not permissible in the absence of either a search warrant or valid consent. Thus, by prohibiting any and all mention of the warrant to the jury, it might engage in inappropriate speculation.

SO ORDERED this ____ day of August, 2003, at Hartford, Connecticut.

CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE